

**TOWN OF LAUDERDALE-BY-THE-SEA
TOWN COMMISSION
SPECIAL WORKSHOP MINUTES
Jarvis Hall
4505 Ocean Drive
Tuesday, May 24, 2016
5:00 PM**

1. CALL TO ORDER – Ethics Training

Mayor Scot Sasser called the meeting to order at 5:00 p.m. Also present were Vice Mayor Mark Brown, Commissioner Alfred “Buz” Oldaker, Commissioner Elliot Sokolow, Commissioner Chris Vincent, Town Manager Bud Bentley, Assistant Town Manager Tony Bryan, and Town Attorney Susan Trevarthen and her partner Robert Meyers of Weiss Serota Helfman Cole & Bierman.

2. DISCUSSION ITEM

a. Broward County Code of Ethics

Town Attorney Susan Trevarthen stated that tonight’s interactive training session would focus on changes to the Broward County Code of Ethics and would provide an opportunity for the Commissioners to ask questions in one another’s presence under the Sunshine Law.

Robert Meyers advised that the Broward County Code of Ethics was amended in December 2015. Most of the amendments took effect immediately, with others taking effect in April 2016 and another scheduled for September 2017. He presented a powerpoint presentation (attached).

The amendments included the definition of terms, such as:

- Contractor/vendor: a person or entity which is currently doing business with or has supplied goods and services to the Town within two years;
- Potential supplier: a party that has submitted a response to a currently open solicitation process by the Town; in September 2017, this term will be broadened to include a party that has responded to a solicitation process within two years;
- Remuneration: wages, salaries, tips, bonuses, profits, direct employer contributions into retirement plans, return of capital, and other distributions;
- Outside or concurrent employment: providing services to any person or entity other than the Town.

Town Attorney Trevarthen added that a list of current Town contractors and vendors is maintained on the Town’s website. The list may be used to determine whether these

contractors or vendors qualify for special limitations on gifts. Compensation and remuneration must be reported.

Vice Mayor Brown pointed out that pension payments to a retiree are not included under the definition of remuneration, although employer contributions into retirement plans are included. Commissioner Sokolow also noted that return of capital is listed individually rather than being considered part of other distributions. Town Attorney Trevarthen advised that if any Commissioner has concerns about these definitions, they may request a safe harbor opinion, which, if followed, would provide immunity from prosecution by the Office of the Inspector General for violations of the County Code requirement to report remuneration. This immunity would exist even if the Inspector General does not agree with the opinion.

Mr. Meyers added that volunteer work does not qualify as outside or concurrent employment, as there is no compensation for this work. Passive activities, such as investments, are also not considered to be employment.

Mr. Meyers advised that most of the changes to the Code of Ethics relate to gifts. The previous rule prohibited acceptance of a gift in one's official capacity from a lobbyist, contractor, or vendor. This rule applied to both elected officials and their families, and extended even to very small items, such as a cup of coffee. This rule has now been relaxed, with a maximum \$5 limit on the value of a gift from contractors, vendors and lobbyists. This limit is lifted if a gift is offered in sympathy or condolence in the event of significant illness, injury, or death of an official or an official's immediate family member, but may still be subject to the \$50 limit on official capacity gifts.

Town Manager Bud Bentley requested clarification of how this rule would apply to a third-level vendor that has no direct relationship with the Town. Mr. Meyers replied that, without a direct relationship with the Town, an entity would not qualify as a contractor or vendor.

Another exception to the \$5 gift limit is training: if an entity wishes to pay for an elected official's training in connection to his or her position as an official, this is allowed (with a \$100 requirement for reporting to the state). The \$5 limit may also be exceeded if a contractor, vendor, or lobbyist purchases a non-alcoholic beverage for an official.

The final exception is admission to a charitable event: a contractor, vendor, or lobbyist may pay for an elected official to attend such an event, although the official must reimburse the entity for any food or beverage consumed by the individual using the ticket. This applies even if the official gives his ticket to another individual. The \$100 state reporting requirement also applies in the case of charitable events. Officials must make good faith efforts to determine the cost of admission if it is not stated.

Mr. Meyers continued that gifts accepted from friends must also be below the \$100 limit according to State law to avoid having to report the gift. If the friend giving a gift is also a lobbyist, however, the prohibition on gifts under the Broward County Ethics Code and the

\$100 maximum state limit would apply. He also pointed out that the new definition of contractor/vendor excludes other governmental entities in Broward County, such as the Broward Sheriff's Office or the Broward County School Board. There is no value limit placed on gifts received in a non-official capacity. He emphasized, however, that if a gift is intended to influence an elected official's decision making, the size or value of the gift is immaterial and it must not be accepted under state law.

It was noted that the Broward County Code of Ethics follows State law in determining what constitutes a gift. An individual does not have to report a gift associated with his or her private employment, although the Inspector General has stated that gifts received from contacts made after an individual has been elected should be reported. State law does not address public officials who give gifts to third parties or other governmental entities.

The Code of Ethics also prohibits elected officials or their family members from lobbying other governments in Broward County. An official's family may, however, do business with that official's own government as long as they do not live with the official and are financially independent from one another.

If an individual appears at a duly noted public meeting on behalf of a client, that individual is not considered a lobbyist; however, if the same individual meets privately and one-on-one with other elected officials on behalf of a client, it may be considered lobbying depending on what is discussed. This also applies to private written communication advocating on behalf of a client. The updated rule places the burden entirely on the lobbyist to make a record of the communication s/he has with an official, irrespective of where the communication occurs or what type of communication is made.

Mr. Meyers noted, however, that the Inspector General has indicated that he would prefer that, if a lobbyist fails to properly record his or her contact with an elected official, the burden of recording this contact would then fall back on the official, but there appears to be no support for this position in the County Code of Ethics.

Mr. Meyers moved on to fundraising activities, for which the Code of Ethics' rules have not changed other than the establishment of a time frame. Elected officials engaged in fundraising activities for charitable organizations must now report this information within 15 days of the activity. If the Town itself sponsors a charitable event, elected officials are not responsible for reporting this activity.

Service on a host committee that is engaged in fundraising activity must be reported. Officials must also report any participation in campaign fundraising activities for other candidates at the State, national, and local levels. If an individual gives a check to an elected official to be given to a candidate, this must also be reported.

Newly elected officials are required to participate in four hours of training within their first 120 days in office, with another four hours of training required before the end of the first

year. After the first year, four hours of annual training are required for all elected officials. The State also requires four hours of training each year.

Requests for safe harbor opinions are no longer required to be made in writing, although it is advisable to put them in writing. Any safe harbor opinion received must be sent to a County database within 15 days of receipt. A safe harbor opinion protects the recipient from being in violation of the Broward County Code of Ethics if all material facts are provided to counsel. Town Attorney Trevarthen emphasized the importance of providing all material facts if a safe harbor opinion is requested, as it cannot protect an official otherwise.

Mr. Meyers reviewed recent safe harbor opinions dealing with travel-related expenses, the estimated value of an invitation to a charitable event, an invitation to an event in an official's private capacity, whether or not valuable items provided at a conference were considered gifts, and elected officials who are members of organizations that do business with their cities.

Town Attorney Trevarthen reminded the Commissioners that in addition to State and County Codes of Ethics, there is also a Town Code of Ethics for elected officials in Lauderdale-By-The-Sea. The Town Code of Ethics includes restriction of elected officials from voting on vendors with whom they are affiliated through close, formal, or informal association. It also prohibits the Mayor or a Commissioner from participating in a shade session if s/he is affiliated with the party adverse to the Town. She pointed out that both restrictions apply to current or ongoing relationships, not previous relationships.

Mr. Meyers recalled that the State Legislature first acted in the year 2003 to increase penalties for public corruption, although he noted that most officials who are jailed for these offenses were found to have violated federal law in the form of the Honest Services Act. Most of these violations were related to conflicts of interest. A United States Supreme Court decision required that in order to prosecute a public official for violation of the Honest Services Act, an underlying crime such as bribery or unlawful compensation must be charged along with a conflict of interest charge..

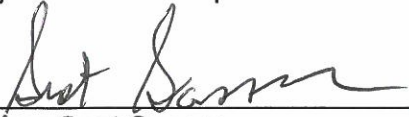
In 2016, the State Legislature changed the standard for violation of the State Code of Ethics from a requirement to show corrupt intent or motive to a requirement to show that the official "knowingly or intentionally" committing an unlawful act. This may make it more likely for prosecutions to be pursued. The definition of official misconduct has been expanded to include public contractors as well as elected officials. Mr. Meyers pointed out, however, that prosecutors have typically been less willing to pursue legal action against the private sector.

Town Attorney Trevarthen briefly noted predatory public record practices, which include the failure to provide all records requested. A bill to address these practices was recently introduced in the State Legislature; while it ultimately did not pass, there has been discussion of a similar bill during the next legislative session.

Lauderdale-By-The-Sea
Town Commission Workshop
May 25, 2016


The Office of the Inspector General has expressed concern regarding the existing safe harbor provision, as the Inspector General feels any safe harbor opinions should come from a centralized entity; however, the Broward County Board of County Commissioners' Charter Review Committee has not addressed this issue thus far. Another issue is the potential application of the Code of Ethics to municipal employees as well as to County employees; at this time, the County Code of Ethics does not apply to municipal employees. Mr. Meyers concluded that the process of ethics reform in Broward County is not yet complete and remains subject to further amendment.

With no further business to come before the Commission at this time, the meeting was adjourned at 6:40 p.m.



Mayor Scot Sasser

ATTEST:



Town Clerk Tedra Smith

6-15-16

Date

ETHICS TRAINING FOR LAUDERDALE-BY-THE-SEA ELECTED OFFICIALS

ROBERT MEYERS, ESQ.

MAY 24, 2016



WEISS SEROTA HELFMAN
COLE & BIERMAN

AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW

AGENDA

- AMENDMENTS TO BROWARD
COUNTY ETHICS ORDINANCE
- RECENT SAFE HARBOR
OPINIONS
- LEGISLATIVE DEVELOPMENTS
- QUESTIONS

OVERVIEW OF AMENDED ORDINANCE

- Ordinance amended in December 2015
- Most changes went into effect immediately; some in 2016 and one in 2017
- Definitions have been added:
 - relative
 - vendor
 - outside employment
 - remuneration

VENDOR/CONTRACTOR DEFINITION

- Term “potential supplier” is no longer used
- Vendor – a person or entity currently supplying goods or services to the Town or that has supplied any goods or services to the Town within prior two years, or one who has submitted a response to a currently-open competitive solicitation
- January 1, 2017 – vendor will also include a party or entity responding to a competitive solicitation during the current or prior two years

REMUNERATION – NEW DEFINITION

- Monetary payment received in return for services, including wages, salaries, tips, bonuses; profit and other distributions; direct employer contributions into retirement plans.
- Does not include gifts, business expense reimbursements, paid training, direct employer contribution toward insurance, return of capital or payment of interest related to one's capital contribution

REMUNERATION -- CONTINUED

- Changes from our previous opinions
 - Did not include profit and other distributions and direct employer contributions into retirement plans as compensation
 - Did not require officials to report incentive bonuses or deferred compensation as remuneration until such benefits were distributed
 - All of the above is now required to be reported

OUTSIDE/CONCURRENT EMPLOYMENT DEFINITION

- Defined as providing services for any person or entity other than the Town in exchange for remuneration
- We have opined that volunteer work is exempt from definition (no disagreement from OIG) as is income generated from passive activities (OIG may disagree)

GIFTS – LOBBYISTS, VENDORS AND CONTRACTORS

- Old rule – no official gifts of any value to official or relatives
- New rule -- \$5 limit, except for the following gifts:
 - condolence/sympathy – death, significant injury or illness of official or immediate family member
 - training;
 - nonalcoholic beverages and
 - admission to charitable events, as long as disclosures made and official reimburses donor for value of food and beverages consumed by person using the ticket
- Still bound by state law -- \$100 cap and reporting requirements

GIFTS -- OTHERS

- Other governmental entities in Broward no longer considered lobbyists, vendors or contractors
- Governmental entities and other donors giving gifts to elected officials in their official capacity still limited to \$50
- Gifts from own government no longer considered a gift
- No change to gifts received in personal (nonofficial) capacity – no limit
- Remember state law ban on gifts of any size or type if given to influence your official action

OUTSIDE/CONCURRENT EMPLOYMENT REPORTING REQUIREMENTS

- Remuneration defined
- Option of disclosing the exact amount or within a range
- Retirement contributions are now within the definition - must disclose the exact amount or check box
- Must report by July 1st for prior year, as previously opined

OUTSIDE/CONCURRENT EMPLOYMENT -- FAMILY

- No immediate family or staff shall lobby any covered individuals – official's municipality or other local governmental entities in Broward
- Under certain conditions, immediate family member may do business with official's municipality –
 - family member doesn't live with official,
 - they are financially independent from one another, and
 - form attesting these facts is filed.

LOBBYING AND LOBBYISTS

- Lobbyists must complete contact log irrespective of location or mode of communication within three days
- No more requirements for elected officials to report
- Contact log must now include name of people attending and location
- Municipalities must create accessible contact logs by April 1, 2016 – LBTS has done so.

FUNDRAISING ACTIVITIES

- For both charitable contribution fundraising and campaign fundraising for other candidates, elected official must file disclosure within 15 days of fundraising activities
- For campaign fundraising activities, municipality may provide a link to separate database where campaign finance disclosures are otherwise filed

TRAINING

- For newly-elected officials, 4 hours within 120 days and another 4 hours by end of first year
- For others, hours reduced from 8 to 4
- Annual defined as term year, as previously opined
- Training content now defined
- Must file certification within 15 days – must be more detailed than under old law
- Certification within 30 days after end of term year
- At least 2 hours must be interactive

PROCUREMENT SELECTION COMMITTEES

- Officials expressly permitted to attend committee meetings provided that they do not participate or otherwise interfere

ADVISORY OPINIONS

- Request for opinion from official no longer must be in writing, but it is advisable
- Opinion must include a recitation of material facts
- Opinion must be sent to county database of opinions in searchable format within 15 days of receipt – Town Attorney's office is handling for Town

RECENT SAFE HARBOR OPINIONS UNDER COUNTY ETHICS

- Invitation whereby Institute would cover certain travel expenses - limited to \$50 because individual was invited in his official capacity
- Official invited to attend a pre-performance reception and performance -- \$50 cap would apply; must ascertain the value of reception and the portion of the ticket proceeds going to charity
- Official invited to reception in private capacity not limited to \$50 cap. Same result for official invited to play in golf tournament.
- Official given iPad to use at conference – can donate to a charity after the conference and will not be considered a gift to official

RECENT SAFE HARBOR OPINIONS - CONTINUED

- Official's spouse selected to participate in leadership program in connection with their private business not a gift to the official because this benefit is primarily associated with the official's spouse's private employment and exempt from gift rules. Company selecting official's spouse to participate in program may occasionally have business before the City. Unlikely to create a conflict, unless official or spouse receives special private gain from vote.

RECENT SAFE HARBOR OPINIONS - CONTINUED

- Gift from a party based on relationship that predated official's election not limited to \$50.
- Remember state law ban on gifts of any type intended to influence official action
- Official may sell homes and accept real estate commissions for sales in new community even though developer appears before official's government. Could have a voting conflict if developer owes money to elected official at the time the developer's item is before the city commission.

RECENT SAFE HARBOR OPINIONS - CONTINUED

- Elected official who is a member of an organization doing business with the city – no conflict for official to vote on funding to organization.
- Compare Town Code of Ethics Section 2-26: potential conflict
- Official chairing a charitable event would not have to report his charitable fundraising activities because event was sponsored by the city. Official can use city resources to support fundraising activities and solicit from vendors, lobbyists, contractors among many others, as long as they aren't targeted.

LEGISLATIVE DEVELOPMENTS

- New public corruption bill to take effect on October 1st
- Changes the mens rea element for certain public corruption crimes from “corruptly” to “knowingly” and intentionally”
- Expands the definition of official misconduct and bid tampering to public contractors
- Effect – easier to convict public officials of public corruption offenses, and more likely that contractors will be charged as well

Questions?



WEISS SEROTA HELFMAN
COLE & BIERMAN

AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW